

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
05-CR-344A

RICHARD A. MUTO,

Defendant.

This case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1)(A). On September 4, 2009, Magistrate Judge Scott filed an Amended Report and Recommendation, recommending that the government's prior motion for reconsideration be granted; that defendant's initial motions to suppress his statements be denied; and that Count II of the Indictment be deemed timely.

Defendant filed objections to the Report and Recommendation on September 25, 2009, and the government filed a response thereto on October 20, 2009. Oral argument on the objections was held on November 6, 2009.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and

Recommendation. At oral argument, defendant cited to *Dickerson v. U.S.*, 530 U.S. 428 (2000), in support of his argument in favor of suppression. *Dickerson* merely struck down 18 U.S.C. § 3501 as unconstitutional and re-affirmed *Miranda v. Arizona*, 384 U.S. 436 (1966). See *id.* at 437 (“This case therefore turns on whether the *Miranda* Court announced a constitutional rule or merely exercised its supervisory authority to regulate evidence in the absence of congressional direction.”); *id.* at 444 (“In sum, we conclude that *Miranda* announced a constitutional rule that Congress may not supersede legislatively. Following the rule of *stare decisis*, we decline to overrule *Miranda* ourselves.”). *Dickerson* thus does not require a different course of action.

Accordingly, for the reasons set forth in Magistrate Judge Scott's Report and Recommendation, the government's prior motion for reconsideration is granted; defendant's initial motions to suppress his statements are denied; and Count II of the Indictment is deemed timely.

The parties are to appear before this Court at 9:00 a.m. on Friday, December 11, 2009 for a status conference.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: December 10, 2009